



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 8, 2003

The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Conyers:

Thank you for your letter of August 21, 2003, to Attorney General Ashcroft regarding the USA PATRIOT Act. We welcome the opportunity to respond to the concerns expressed.

Your first concern is that efforts by the Department of Justice ("Department") to educate the public and to inform members of Congress about the actual provisions of the USA PATRIOT Act might violate a restriction on the Department's use of appropriated funds "for publicity or propaganda purposes not authorized by Congress." Your letter does not cite, and we are not aware of, any legal authority for the proposition that the use of funds to educate the public and inform members of Congress about the Department's position on legislation would be "for publicity or propaganda purposes." Indeed, even the General Accounting Office (GAO), an arm of Congress, has recognized that "every agency has a legitimate interest in communicating with the public and with Congress regarding its functions, policies, and activities" and that "publicity or propaganda" riders do not restrict such activities. Principles of Federal Appropriations Law, at 4-162 (2d ed. 1991). As recently as 2000, GAO's general counsel, addressing a similar "publicity or propaganda" rider, explained:

Public officials may report on the activities and programs of their agencies, may justify those policies to the public, and may rebut attacks on those policies. The executive branch has a duty to inform the public regarding Government policies and, traditionally, policy-making officials have used Government resources in explanation and defense of their policies.

In the Matter of Susan Gaffney, 2000 WL 1193462, at *3 (Comp. Gen.) (citations omitted). Furthermore, it would be bizarre, and would raise profound constitutional problems, if an Administration subjected to reckless misrepresentations on a matter as important as the war on terrorism were to be disabled from exposing those misrepresentations. Although such a state of affairs would obviously serve the propaganda purposes of those engaged in the reckless misrepresentations, it would severely disserve the national security interests of the United States.

The Honorable John Conyers, Jr.

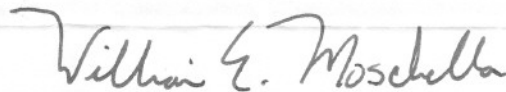
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Your second concern is that these same Department efforts might violate the Anti-Lobbying Act. Please rest assured that, across Administrations of both parties, the Anti-Lobbying Act has consistently been construed to have no application to officials appointed by the President, with the advice and consent of the Senate, who are acting within their areas of responsibility. Moreover, even as to those officials to whom the Act does apply, it has long been recognized (again, across Administrations of both parties) that such officials may communicate directly with Members of Congress and their staffs in support of Administration positions and may communicate with the public through public speeches, appearances, and published writings to support Administration positions. There is, in short, absolutely no basis for concern that the Department activities to which you refer might violate the Anti-Lobbying Act.

Your third stated concern is that the Department supposedly supports new legislation that "has little or nothing to do with anti-terrorism investigations and instead would give Federal agents new and unjustified authorities in all criminal law cases." With respect, we believe that your assertion is unfounded. In the war on terrorism, it is vitally important that anti-terrorism investigators have access to the same legal tools that long have been available in ordinary criminal cases. The USA PATRIOT Act began to level the playing field, but work remains to be done. For instance, as the Attorney General indicated in testimony before the House Judiciary Committee on June 5 of this year, under current law certain drug offenders presumptively are denied bail before their trials. But no such presumption exists for those charged with terrorism-related crimes. The Administration and Congress must continue to work together to ensure that our nation's laws do not deny anti-terrorism investigators the ability to use authorities that their law-enforcement counterparts have used for decades.

If we can be of further assistance on this or any other matter, please do not hesitate to contact this office.

Sincerely,



William E. Moschella
Assistant Attorney General

cc: The Honorable F. James Sensenbrenner, Jr.
Chairman